IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 296 OF 2005
ALONG WITH
CRIMINAL WRIT PETITION NO. 297 OF 2005

Kashinath Malji Boruse .....Petitioner.

V/s

1. Rajaram Patil Buwa Demse
and anr. .....Respondents.

Mr. A.N. Mulla, advocate for the petitioner.

Mr. M.S. Karnik, advocate for respondent No.1.

Mrs. M.M. Deshmukh, APP for State.

CORAM: V.M. KANADE, J.
DATE : 4th August, 2006.

P.C.

1. Both these petitions can be disposed of by a common order since the petitioner - original accused is challenging the order passed by the learned Chief Judicial Magistrate, rejecting both his applications in two cases filed against him. The learned Magistrate rejected both the applications which were filed by the petitioner - accused for referring the disputed cheques to the handwriting expert.

2. Brief facts which are relevant for the purpose of deciding these petitions are as under:-

3. The respondent No.1 - original complainant filed two Criminal Cases against the petitioner being Criminal Case No. 877 of 2002 and Criminal Case No. 878 of 2002 under section 138 of the Negotiable Instruments Act in the Court of J.M.F.C., Nashik for the alleged dishonour of two cheques in the sum of Rs 1 lakh each. Both these cases were filed in the year 2002 in which it was alleged that the accused was the owner of a Sweet Shop and that respondent No.1 had given a loan of Rs 2 lakh to him and towards the discharge of the said liability, the accused had issued two cheques; one dated 30/11/2001 and the other dated 20/11/2001. Both the cheques, when deposited, were dishonoured. Accordingly, a statutory notice was issued by the complainant and on non-payment of the said amount two separate complaints were filed in which process was issued. The complainant adduced his evidence and the statement of the petitioner - accused was also recorded under section 313 Cr.P.C in both the cases. When the matter was kept for arguments, an application was preferred by the accused in both the cases in which the Magistrate was requested to refer the two cheques to the handwriting expert for the purpose of ascertaining whether signature and contents of the said cheques was that of the accused or not.

4. The learned J.M.F.C. by a common order, rejected both the applications. Hence the present two Writ Petitions have been filed by the accused.

5. The learned Counsel appearing on behalf of the petitioner very strenuously urged that the Magistrate has erred in rejecting the applications filed by the petitioner for referring the disputed signature to the handwriting expert. He submitted that the learned Magistrate has erred in observing that the signature could be ascertained by the Court in view of the provisions of section 73 of the Indian Evidence Act. He submitted that since the signature was disputed, in the interest of justice it was necessary to obtain the opinion of an expert. He invited my attention to the provisions of section 45 of the Indian Evidence Act and submitted that it was the duty of the Court to obtain the opinion of expert. He submitted that the Court should be slow in relying on the provisions of section 73 and it was always advisable to obtain the opinion of expert. He relied upon the judgment of the Supreme Court in the case of State (Delhi Administration) Vs. Pali Ram, reported in **AIR 1979 SC 14**. He also relied upon the judgment of Gujarat High Court in the case of Satish Jayantilal Shah Vs. Pankaj Mashruwala and another, reported in **1996 CRI.L.J. 3099**. He also relied upon the judgment of Delhi High Court in the case of Smt. Shanta Trivedi Vs. Life Insurance Corporation of India reported in **AIR 1988 Delhi 39** and, lastly, on the judgment of the High Court of Himachal Pradesh & Bilaspur in the case of State Vs. Kishan Dayal, reported in **AIR 1952 Him. P. & Bilaspur 46.**

6. The submissions made by the learned Counsel

appearing on behalf of the petitioner cannot be accepted. The learned Magistrate has passed a reasoned order and has observed that the applications had been made after the trial was over only with a view to protract the trial. The learned Magistrate, after going through the entire evidence and after perusing the evidence of the accused who had examined himself, observed that, throughout the trial, the accused had taken a consistent defence that he has lost some blank cheques having his signature and the complainant found those cheques and to extract money, both the cases have been filed against him. The Magistrate observed that from the defence, it was clear that the accused had admitted his signatures on both the cheques. In view of this specific defence which he had taken after examining himself as a witness in trial, it is not now open for the petitioner - accused to dispute the signatures. Under these circumstances, the Trial Court observed that the applications were made only to protract the trial.

7. In my view, in these circumstances, observations made by the learned Magistrate while rejecting the applications of the petitioner cannot be faulted. There cannot be any dispute regarding the ratio laid down by the Supreme Court and the other High Courts in the cases on which reliance is placed by the petitioner. However, ratio of the said judgments will not apply to the facts of the present case. Under these circumstances, there is no reason to interfere with the well reasoned order passed by the Magistrate while

exercising the jurisdiction under Article 227 of the Constitution of India as there is no error of law apparent on the face of record.

8. Both these Petitions are accordingly dismissed. Trial Court is directed to decide both the cases as expeditiously as possible and in any case within a period of six months.

(V.M. KANADE, J.)